

REMARKS

Applicant thanks the Examiner for the very thorough consideration given the present application.

Claims 1, 2, 5, 6, 10 and 13-16 are now present in this application. Claim 16 is independent. By this amendment, claims 1, 2, 5, 10 and 13 are amended, and claim 9 is canceled without prejudice. No new matter is involved.

Reconsideration of this application, as amended, is respectfully requested.

Reply to Election of Species Requirement

Applicant hereby elects the invention of Species of Figs. 4 and 5, with traverse

Applicant respectfully submits that claims, i.e., claims 16 and 17 read on species (a), i.e., Figs. 4 and 5.

Applicant traverses the outstanding (second) restriction requirement for the following reasons.

Firstly, Applicant responded to the first election of species requirement in a paper filed on November 16, 2006. Applicant presented a number of detailed arguments directed to the merits of the first election of species requirement (dated October 19, 2006). Unfortunately, this second election of species requirement fails to respond on the merits, as required by MPEP §707.07(f), to each of Applicant's arguments.

For example, Applicant clearly argued, in the Reply filed on November 16, 2006, that:

“originally filed claims 1-12, which were examined on their merits in the Office Action dated March 3, 2006, read on all disclosed embodiments, including the embodiments shown in Figs. 4-7, which necessarily includes the species of Figs. 4 and 5. Accordingly, in order to examine original claims 1-12, the Examiner had to thoroughly search all disclosed embodiments, including the embodiments depicted

Figs. 4-7. The Examiner found no serious burden in searching and examining claims 1-12 on their merits, and has presented no convincing evidence or reasons why any such serious burden exists. In fact, objective factual evidence of the lack of serious burden required to search and examine claims 1-12 is found in the first Office Action on the merits of this application, which involved the search and examination of all of claims 1-12, which read on all disclosed embodiments. MPEP § 803 clearly states that even if the application contains independent and distinct invention, if the search and examination of the entire application can be made without serious burden, the Examiner must examine it on the merits. The outstanding Office Action does not address the issue of whether there is no serious burden on the Examiner and, as a result, does not make out a *prima facie* case that this election of species requirement is proper.

Applicant respectfully submits that there is no serious burden on the Examiner because the Examiner has already examined all of the species because an examination of all originally presented claims, i.e., original claims 1-12, was made on their merits. Further, in this regard, Applicant respectfully submits that the field of search for all of the species claims is identical and that looking for different arrangements of pixel phosphors will not cause an undue search burden in the same field of search on an Examiner who is a trained, experienced prior art searcher.”

The Office Action fails to respond to these meritorious arguments. Because the Office Action completely fails to respond to these quoted, previously presented arguments on the merits, they are deemed to be admitted, and for this reason alone, the second election of species requirement is improper and must be withdrawn.

Additionally, the Office Action is respectfully requested to review these arguments and respond to them on their merits in the next Office Action, as required by MPEP §707.07(f).

Secondly, the outstanding Office Action is based on the premise that the applications contains claims directed to three patentably distinct species, i.e., (a) the species of Figs 4 and 5; (b) the species of Fig. 6; and (c) the species of Fig. 7. The Office Action states that the species are independent or distinct because they are unconnected in design operation and effect. Unfortunately, no objective factual evidence is presented to support this conclusion. It is well settled that such evidence must be provided in an Office Action for that action to be proper. Compare, in this regard, In re Lee, 277 F.3d 1338, 1343, 61 USPQ2d 1430, 1433 (Fed. Cir. 2002).

If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone Robert J. Webster, Registration No. 46,472, at (703) 205-8076, in the Washington, D.C. area.

Prompt and favorable consideration of this Reply to Second Election of Species Requirement and Amendment under 37 CFR §1.111 are respectfully requested.

Conclusion

The election of species requirement has been fully responded to on the merits, with traverse. Applicant therefore respectfully requests that the Examiner reconsider the outstanding election of species requirement and that it be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for examination of all pending claims on their merits.

If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone Robert J. Webster, Registration No. 46,472, at (703) 205-8076, in the Washington, D.C. area.

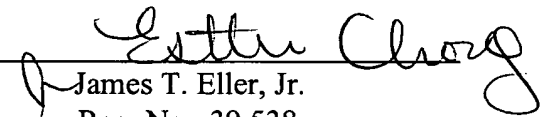
Prompt and favorable consideration of this Amendment is respectfully requested. If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or

credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

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Respectfully submitted,

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